STATE OF MICHIGAN

COURT OF APPEALS

PATRICK MENDOLA and LAURA M. MENDOLA,

Plaintiffs-Appellants/Cross-Appellees,

v

T.M.I. SOUTHEASTERN, INC., a Michigan corporation, and DAVID HARVEY, Individually, and d/b/a T.M.I. SOUTHEASTERN, and d/b/a KOYLA LIMITED INC., and d/b/a TITLE AND MARBLE INSTALLERS OF MICHIGAN, Jointly and Severally,[1]

Defendants-Appellees/Cross-Appellants.

UNPUBLISHED
September 16, 2003

No. 240632
Macomb Circuit Court
LC No. 01-000242-CK

Before: Whitbeck, C.J., and O'Connell and Cooper, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's March 11, 2002, judgment against defendant Koyla Limited, Inc., d/b/a T.M.I. Southeastern. The trial court awarded plaintiffs $14,875, plus statutory interest at a rate of twelve percent from the date the complaint was filed. Defendants cross-appeal, arguing that the loan was usurious and that the complaint was filed after the period of limitations expired. We affirm in part and reverse in part. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

[1] We note that during the hearing on defendants' motion for partial summary disposition, the trial court ordered plaintiffs to elect whether the loan was a personal loan to David Harvey or a business loan. Plaintiffs elected to proceed under the theory that the loan was a business loan and Mr. Harvey was dismissed from the law suit pursuant to the trial court's September 14, 2001, order. The record also indicates that defendant Koyla Limited Inc. is actually Koyla Limited Inc., d/b/a T.M.I. Southeastern.

I. Background Facts

This breach of contract action arises out of defendants' failure to repay a $25,000 loan that was borrowed from plaintiffs. David Harvey testified that he was a consultant for Koyla Limited, Inc., d/b/a T.M.I. Southeastern. At the time of the loan in question, Mr. Harvey testified that Koyla Limited, Inc. was doing some work for Hudson's. Mr. Harvey further explained that his son owned a separate company named T.M.I. Southeastern, Inc., but explicitly denied any connection between T.M.I. Southeastern and T.M.I. Southeastern, Inc. He acknowledged, however, that both companies were located in the same building and used T.M.I. Southeastern, Inc.'s letterhead—which stated "T.M.I. Southeastern" at the top of the letterhead.

Mr. Harvey borrowed money from plaintiffs on several occasions in 1993, and deposited it into T.M.I. Southeastern, Inc.'s bank account. Mr. Harvey enclosed a letter with the check to repay the first loan, on T.M.I. Southeastern letterhead, requesting a second loan and noting that plaintiffs' assistance allowed him to complete his work project with Hudson's. Mr. Harvey testified that this money was needed to pay Koyla Limited, Inc.'s employees. The record indicates that at least two of these loans were repaid out of T.M.I. Southeastern, Inc.'s bank account. Plaintiffs loaned Mr. Harvey more money in November 1993, which was also deposited in T.M.I. Southeastern, Inc.'s bank account. However, Gregory Basont, the president of Menlo, Inc., repaid this loan. All of these loans were repaid as of December 27, 1993.

On December 30, 1993, plaintiffs made a fifth check out to Mr. Harvey in the amount of $25,000. In the letter requesting this loan, Mr. Harvey thanked plaintiffs for helping him again and stated that partial payments would be made on March 15, April 15, May 15, and June 20, 1994. Mr. Harvey also proposed monthly interest payments of $500, which he calculated to be twenty-four percent. Throughout the following year, the monthly interest payments were made by both T.M.I. Southeastern, Inc. and Menlo, Inc.[2] However, as of January 1995, the full principal of $25,000 was still outstanding. On January 30, 1995, Mr. Harvey wrote a letter to plaintiffs explaining that his receivables had not come in as expected and that he needed until March 10th to repay the loan.[3] Mr. Harvey enclosed a $500 check with this request for the extra weeks. In February, 1995, plaintiffs returned the $500 check and requested payment in full. On March 9, 1995, Mr. Harvey transmitted a check to plaintiffs, written on defendant T.M.I. Southeastern's bank account, for $10,675. There were no further payments made toward the original $25,000 loan.

II. Interest Damages

Plaintiffs argue that they were entitled to twenty-four percent interest damages from the date of the contract breach to the date of the complaint. We agree. This Court reviews the trial

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[2] There was one interest payment of $500 missing for the year.

[3] At trial, Mr. Harvey testified that the date on the letter referred to March 10, 1995.

court's findings of fact for clear error and its conclusions of law de novo. *Chapdelaine v Sochocki*, 247 Mich App 167, 169; 635 NW2d 339 (2001). A trial court's application of laches is also reviewed for clear error. *Gallagher v Keefe*, 232 Mich App 363, 369; 591 NW2d 297 (1998). "Clear error exists where, after a review of the record, the reviewing court is left with a firm and definite conviction that a mistake has been made." *Marshall Lasser PC v George*, 252 Mich App 104, 110; 651 NW2d 158 (2002).

The trial court in this case determined that the note interest was only applicable until the contract expired in January 1995. It further stated that plaintiffs were "not entitled to accrue interest at $500.00 a month while [they] sat on [their] hands waiting to exercise a breach." However, there is nothing in the contract to indicate that interest payments would cease to accrue after one year. Rather, the contract states that the interest would be $500 per month, which calculates as twenty-four percent. A contract must be interpreted and enforced pursuant to its plain and ordinary meaning. *Alibri v Detroit/Wayne Co Stadium Authority*, 254 Mich App 545, 558; 658 NW2d 167 (2002).

Moreover, as noted in *McCreery v Green*, 38 Mich 172, 185 (1878), "[i]t is a general rule here that a failure to pay money promised when by law it ought to be paid authorizes the allowance of interest in the nature of damages for the improper detention of the sum so promised." Indeed, it has long been held that "'interest is a legitimate element of damages used to compensate the prevailing party for the lost use of its funds.'" *SSC Associates Ltd Partnership v General Retirement System of Detroit*, 210 Mich App 449, 453; 534 NW2d 160 (1995), quoting *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 499; 475 NW2d 704 (1991). In this case, the amount of interest was clearly depicted in the body of the contract. Thus, the trial court erred when it failed to award interest, at a rate of $500 per month, from the date of the contract's breach until the complaint was filed.

To the extent defendants argue that the doctrine of laches supported the trial court's decision, we note that the "[m]ere delay in asserting a claim for a period less than that in the statute of limitations does not constitute such laches as will defeat recovery in law or equity." *Eberhard v Harper-Grace Hospitals*, 179 Mich App 24, 37; 445 NW2d 469 (1989), quoting *McRaild v Shepard Lincoln Mercury, Inc*, 141 Mich App 406, 411; 367 NW2d 404 (1985). Moreover, defendants have failed to show how they were prejudiced by plaintiffs' delay in bringing this suit when they were not prevented from repaying the loan. See *City of Troy v Papadelis (On Remand)*, 226 Mich App 90, 96-97; 572 NW2d 246 (1997).

III. T.M.I. Southeastern, Inc. v. Koyla Limited, Inc.

Plaintiffs further contend that the trial court erroneously concluded that Mr. Harvey borrowed money on behalf of Koyla Limited, Inc. rather than on behalf of defendant T.M.I. Southeastern, Inc. We disagree.

In the instant case, Mr. Harvey testified that he borrowed money from plaintiffs in an attempt to meet the payroll demands of Koyla Limited, Inc., d/b/a T.M.I. Southeastern. While Mr. Harvey acknowledged that T.M.I. Southeastern and T.M.I. Southeastern, Inc. operated out of the same location and used the same stationery, he denied that they were the same corporation or that he had any authority to represent T.M.I. Southeastern, Inc. When Mr. Harvey borrowed money in the past from plaintiffs, the checks were deposited into T.M.I. Southeastern, Inc.'s

account and repaid from its corporate account. However, Mr. Harvey explained that this was just a revolving line of credit with his son, whereupon he would get a loan from his son that he would repay with the money he borrowed from plaintiffs. Furthermore, Menlo, Inc., paid some of the interest payments on the December loan and the $10,675 partial payment was made from T.M.I. Southeastern's own bank account. On this record, we are not convinced that the trial court clearly erred in concluding that Mr. Harvey borrowed money on behalf of Koyla Limited, Inc., d/b/a T.M.I. Southeastern.

IV. Usurious Loan

On cross-appeal, defendants allege that the trial court erred when it failed to determine that the loan in question was usurious. Specifically, defendants assert that the business entity exception is inapplicable because it was undisputed that Mr. Harvey never signed a sworn statement of business purpose. We disagree.

The general usury statute, MCL 438.31, allows for a maximum interest rate of seven percent per annum. However, MCL 438.61 provides an exception to the general usury statute for business entities. A business entity is defined as "a corporation, trust, estate, partnership, cooperative, or association, or a natural person who furnishes to the extender of credit a sworn statement in writing specifying the type of business and business purpose for which the proceeds of the loan or other extension of credit will be used." MCL 438.61(1)(a). According to MCL 438.61(3), business entities may agree in writing to any rate of interest not in excess of twenty-five percent per year. See also MCL 438.41.

While the check for the December 30, 1993, loan was made out to Mr. Harvey, it is clear from the record that he was acting on behalf of defendant Koyla Limited, Inc., d/b/a T.M.I. Southeastern. In the series of transactions leading up to the loan in question, Mr. Harvey made references to the fact that the money was needed for his business. Additionally, Mr. Harvey's written request for the extension on the December loan came on T.M.I. Southeastern letterhead and explained that he needed more time because his receivables had not come in as expected. Most compelling, however, is the fact that the partial payment of $10,675 was issued from T.M.I. Southeastern's bank account. In fact, Mr. Harvey never made any payments on the loans from plaintiffs. We also note plaintiff Patrick Mendola's testimony that he understood that the loans were for Mr. Harvey's company. A corporation does not need to have a sworn statement of business purpose in order to agree to a twenty-four percent interest rate. See MCL 438.61. Accordingly, the loan in this case was not usurious.

V. Statute of Limitations

Defendants also contend that the trial court erroneously concluded that plaintiffs' claims were not barred by the statute of limitations. We disagree. Whether a cause of action is barred by a statute of limitations is a question of law that we review de novo. *Jackson Co Hog Producers v Consumers Power Co*, 234 Mich App 72, 77; 592 NW2d 112 (1999).

The period of limitations in contract cases is six years from the date of the breach. MCL 600.5807(8). Mr. Harvey requested a $25,000 loan from defendants on December 30, 1993. During the course of the following year, defendants made several interest payments on the loan but neglected to pay any of the principal. The record reveals that T.M.I. Southeastern

transmitted a check to plaintiff Laura Mendola on March 9, 1995, in the amount of $10,675. Plaintiffs filed the instant complaint on January 17, 2001.

The $10,625 check was a partial payment of the outstanding debt. In *Yeiter v Knights of St. Casimir Aid Society*, 461 Mich 493, 497; 607 NW2d 68 (2000), our Supreme Court held that "a partial payment restarts the running of the limitation period unless it is accompanied by a declaration or circumstance that rebuts the implication that the debtor by partial payment admits the full obligation." Because plaintiffs filed their complaint within six years from the date of this partial payment, the trial court properly determined that their claims were not barred by the statute of limitations.

Affirmed in part and reversed in part. We remand this case to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ Peter D. O'Connell
/s/ Jessica R. Cooper